

## Examiner's report

### CTSI Professional Competency Framework

#### Stage 1: Unit 3 Examiner's Report May 2021

##### General

39 Candidates sat the exam in May 2021, marks ranged from 36 to 80. There is a lot of material to study for this paper and candidates who have taken the exams during this cycle have faced additional challenges with the impact of the pandemic, so all should be commended.

Overall, most candidates showed a good understanding of the syllabus for Unit 3, but some students failed to demonstrate a detailed knowledge in the key areas of the syllabus in particular CPRs, ICACS, Due Diligence and Powers. Some general feedback that applies to all candidates is time management, it's important to enable sufficient time to be spent on each question, it was clear by some of the answers that the candidate had run out of time on some questions having spent far too much time writing detailed answers for Section A questions. Another important piece of feedback is not only to read the question, but also to understand what the question is looking for. Candidates have a limited time so it is essential that they stick to the relevant points, if the questions ask for an explanation this should be in your own words not reciting definitions, if it asks for case law or examples remember to include them. You can only be awarded marks for including points that relate to the question. A number of candidates strayed way off topic or gave answers which did not relate to the question at all. Whilst it can be tempting to fill the page with the things you can remember, this is very unlikely to gain marks and candidates should focus that time on other questions. Finally, try to formulate a structured answer and deal with points in order rather than mixing all together, unless otherwise indicated by the question, write in sentences and paragraphs not bullet points (unless you're running out of time and you may then pick up basic marks).

##### Section A

**Q1** 32 candidates answered question 1  
Marks ranges from 7 to 10

This was a popular question understandably as it relates to a key concept of the legislation which is in the detailed knowledge area of the syllabus. To gain full marks candidates were expected to identify the three types of consumers referred to in the legislation, and explain in their own words the meaning. All candidates achieved 7 marks or more, with 7 candidates achieving full marks. Most explained the terms well, and gave some examples. The question also asks for case law, in this question *OFT v Purely Creative (2011)*, *Trento Sviluppo srl, Centrale Adriatica Soc. coop. arlv Autorità Garante della Concorrenza e del Mercato (December 2013)*, *Secretary of State for BIS v PLT Anti-Marketing Ltd (2015)*, could all have been used. The poorer answers did not cover all 3 types of consumers or used case law which was not relevant.

**Q2** 13 candidates answered question 2  
Marks ranges from 2 to 10

Surprisingly this was not a popular question, despite it relating to the key definition of trade or business which is common and consistent across the range of fair-trading legislation. Most of the candidates that attempted this question scored reasonable marks with one candidate achieving full marks. Candidates were expected to include details of how this is defined in the Consumer Protection from Unfair Trading Regulations 2008 and/or the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and then use case law to show how this has been applied by the courts. There is numerous case law which could have been used and this is where many candidates lost marks by either failing to include any case law or used inappropriate case law. It's important that candidates understand the principles applied by the courts even if they are unsure of the facts of the cases, for example the frequency/degree of regularity of the activity and whether it is part of the usual business activity. Cases take under the now revoked Trade Descriptions Act 1968 are still applicable such as *Blakemore v Bellamy* [1983] *Davies v Sumner* [1984] *Haverling London Borough v Stevenson* [1970] or *Devlin v Hall* [1990] 155 JP 20, could all have been used as well as more recent CPR cases such as *Reading BC v Younis* [2015] EWHC 3212 (Admin) or *R v Scottish & Southern Energy PLC* [2012] EWCA Crim 539

**Q3** 24 Candidates answered question 3  
Marks ranged from 3 to 9

More than half of the candidates attempted this question and those who did, the majority achieved over half marks. 2 candidates achieved 9 marks which was the highest mark awarded for this question. The question covered a number of points, the poorer answers failed to cover what the question was asking. The first point related to the purpose of cancellation rights for distance and off-premises contracts which a surprising number of candidates did not cover, it then asked candidates to explain how these types of contracts are defined and finally to identify how long the cooling off period is. Rather than covering these points, some candidates concentrated on the information requirements in the Regulations, and a number also included reference to "waiving cancellation rights" for service contracts commenced within the cancellation period, which showed a lack of understanding of the request to start within the cancellation period and was not what the question was asking.

**Q4** 16 candidates answered question 4  
Marks ranged from 4 to 9

This question was answered well by most of the candidates that attempted it, and all but one candidate achieved at least half marks. It was quite a broad question and candidates there were a number of aspects which candidates could have included. Firstly it was necessary to outline the human rights which are most relevant to trading standards activities i.e. the right to a fair trial, right to private life and the right to peaceful enjoyment of property and possessions, some candidates failed to cover these points. The better candidates identified the difference between absolute and qualified rights and that the latter may be infringed if it is necessary and proportionate. In terms of the right to a fair trial, candidates could have included reference to PACE (or Scottish equivalents) CRA and CPIA. In terms of right to private life and enjoyment of property and possessions, powers in the CRA particularly applications for warrants for private addresses, and controls on surveillance activities could all have been mentioned.

**Q5** 12 candidates answered question 5  
Marks ranged from 2 to 10

A fair number of candidates attempted this question and again most achieved at least half marks with one candidate obtaining full marks for an excellent answer. The first thing which candidates were asked to do was to explain the purpose of the legislation which is to ensure compliance with the HRA and the right to a fair trial. They were then expected to identify the requirements that are placed on investigators – to pursue all reasonable lines of enquiry, record and retain all information in a durable and retrievable form, the better candidates gave examples of how this is carried out in practice, for example, use of secure evidence bags, storage and continuity, notebooks and records. Finally, the question also required a basic knowledge of disclosure, scheduling unused material and applying the disclosure test. A key point that was overlooked by a lot of the candidates was to state what the disclosure test is.

**Q6** This question was answered by 20 candidates  
Marks ranged from 2 to 10

Again, quite a popular question and some good answers, although the first part of the question was very clear that candidates should have looked at Sch 1 practices, actions and omissions, some candidates did not consider all of these in their answers. They were expected to identify some of the banned practices which specifically relate to pricing issues – describing products as free, closing down sales and limited time/limited price offers Misleading actions, again specifically refer to price and the manner in which the price is calculated, and omissions such as failing to state a price at all. Some of the answers did not refer to pricing or gave irrelevant examples. The second part of the question asked for examples from the Pricing Practices Guide of pricing practices which could be misleading, this part of the question was not answered particularly well by some candidates and showed a lack of knowledge of the guidance.

## Section B

**Q7** Question 7 was attempted by 31 candidates  
Marks ranged from 14 to 32

This question was a typical scenario question requiring application of the CPRs and CCRs and identification of offences, followed by consideration of the evidence required and how to collect it. and was a popular choice for candidates. The methodical approach is best with these types of questions, so those candidates who began with a brief explanation of why the CPRs and CCRs apply and the purpose of these pieces of legislation, and explained some of the relevant definitions such as commercial practice, average/vulnerable consumers, transactional decisions and distance contracts were able to pick up initial marks which others missed. Then by going through the various elements of the scenario in turn and identifying all of the potential issues e.g. the prohibited practices of describing a product as free and making claims that a product can cure illnesses, misleading actions in relation to the claims and the price, and omission of material information in relation to the subscription and further deliveries, potential aggressive practices during the telephone call and breach of the general prohibition of professional diligence. Overall, this part of the question was well answered with 5 candidates achieving full marks. Part b) related to evidence gathering, candidates were asked to identify the evidence needed and how they would obtain it using their powers. A total of 15 marks available and again plenty of opportunity to discuss various aspects. When answering these types of questions, candidates must be able to outline the elements of the offence in order to identify the evidence they will need. The obvious ones such as the brochure and witness statements were covered by most candidates, but some failed to include how this would be collected. few candidates picked up on the fact that to prove that claims were misleading they would need evidence regarding the medicinal benefits of the product. A key part of such an investigation would be to identify the trader and there were a number of ways this could be approached, available brochures, open source searches or comms data requests were only mentioned by a few. Use of powers of entry to the traders address, search and seizure powers were included by most but

identification of the actual evidence required was often missing. The final part of the question was about use of powers outside of the LA's area, very few candidates picked up on this point and just repeated what they had said for part b) and failed to pick up on potential evidence that could have been gathered.

**Q8** Question 8 was attempted by 22 candidates  
Marks ranged from 9 to 25

Another popular question and was intended to get candidates to consider the application of the CCRs and CPRs to this type of trader. A good knowledge of the scope and definitions in the legislation was required to achieve good marks, explanation of distance and off-premises contracts, services and goods contracts, clearly showing how these related to Mr Decker's business. The better answers picked up these initial marks and clearly outline some of the key information requirements as well as clarifying the cancellation rights which would apply for the different types of contracts, Again, there appeared to be confusion around services starting within the cancellation period with candidate referring to "waiving cancellation rights". There was also the issue of goods made to the consumers specification for the furniture, only a few candidates referred to social media advertising. The question also requires the candidates to refer to the CPRs, relevant points here were descriptions, pricing and doorstep selling, again some candidates did not cover this.

**Q9** Question 9 was attempted by 16 candidates  
Marks ranged from 9 to 24

This question again was a typical doorstep scenario, with plenty of potential offences for candidates to discuss, claims, pricing and some prohibited practices. On the whole part a) was well answered by most candidates. and on the whole the quality of answers was good. The second part of the question was slightly different to Q7 but many candidates did not properly understand or answer the question, and only identified some of the options which could range from informal advice, guidance or training, prosecution and civil enforcement under the Enterprise Act 2002. The question specifically asked for the factors that candidates would consider in deciding which option to follow and the advantages and disadvantages of each. A lot of answers covered the process they would follow rather than weighing up the options. The final part of the question was about the differences in the process for each of the options, again this part was not well answered with candidates repeating part b) answers and failing to pick up on the key issue of the difference between criminal and civil process and burden of proof, and which powers in the CRA can be used for each.

**Q10** Question 10 was attempted by 8 candidates  
Marks ranged from 6 to 28

This was only answered by a handful of candidates which may have been because it included intellectual property offences which are within the basic knowledge area of the syllabus. There was a lack of awareness about the offences in the Trade Marks Act 1994 and no candidates included consideration of CPR offences, most candidates were able to cover the powers element of part a). Part b) gave some further information from which candidates should have been able to discuss the lack of a trade mark and consider alternative offences, particularly under the CPRs. Candidates then failed to discuss the elements of the offences and instead referred to the powers they would use, which was not the question. Being the final question, it was clear that some candidates were now running out of time and answers to the final part of the question on the requirements of RIPA for directed surveillance, and showed a lack of knowledge of the process.

